

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

EDWARD ANTONE ZWINGE
17760 Countryside Court
Salinas, CA 93907

Registered Nurse License No. 271962

Respondent.

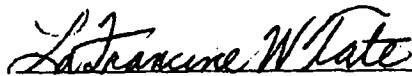
Case No. 2008-269

DECISION

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 12, 2008

IT IS SO ORDERED this September 12, 2008.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 KIM M. SETTLES, State Bar No. 116945
Deputy Attorney General
3 California Department of Justice
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6 Attorneys for Complainant
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10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-269

13 **EDWARD ANTONE ZWINGE**
17760 Countryside Court
14 Salinas, CA 93907

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 Registered Nurse License No. 271962

16
17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
20 proceeding that the following matters are true:

21 **PARTIES**

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
23 the Board of Registered Nursing. She brought this action solely in her official capacity and is
24 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
25 by Kim M. Settles, Deputy Attorney General.

26 2. EDWARD ANTONE ZWINGE (Respondent) is represented in this
27 proceeding by attorney Gary E. Gray, Esq., whose address is 444 Pearl Street, Suite A-5,
28 Monterey, California 93942-1189.

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1 3. On or about August 31, 1976, the Board of Registered Nursing issued
2 Registered Nurse License No. 271962 to EDWARD ANTONE ZWINGE. The License expired
3 on February 29, 2008.

4 **JURISDICTION**

5 4. Accusation No. 2008-269 was filed before the Board of Registered
6 Nursing and is currently pending against Respondent. The Accusation and all other statutorily
7 required documents were properly served on Respondent on April 3, 2008. Respondent timely
8 filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2008-269 is
9 attached as Exhibit A and incorporated herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, and understands the charges and allegations
12 in Accusation 2008-269. Respondent also has carefully read, fully discussed with counsel, and
13 understands the effects of this Stipulated Surrender of License and Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the
15 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
16 counsel, at his own expense; the right to confront and cross-examine the witnesses against him;
17 the right to present evidence and to testify on his own behalf; the right to the issuance of
18 subpoenas to compel the attendance of witnesses and the production of documents; the right to
19 reconsideration and court review of an adverse decision; and all other rights accorded by the
20 California Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
22 each and every right set forth above.

23 **CULPABILITY**

24 8. Respondent admits to the truth of each and every charge and allegation in
25 Accusation No. 2008-269, and agrees that cause exists for discipline and hereby surrenders
26 Registered Nurse License No. 271962 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Registered Nurse License without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that the surrendered of Registered Nurse License No. 271962, issued to Respondent EDWARD ANTONE ZWINGE is accepted by the Board of Registered Nursing.

13. The surrender of Respondent's Registered Nurse license and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

1 14. Respondent shall lose all rights and privileges as a registered nurse in
2 California as of the effective date of the Board's Decision and Order.

3 15. Respondent shall cause to be delivered to the Board his Registered Nurse
4 wall and pocket license certificate on or before the effective date of the Decision and Order.

5 16. Respondent fully understands and agrees that if he ever files an application
6 for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a
7 petition for reinstatement. Respondent must comply with all the laws, regulations and
8 procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all
9 of the charges and allegations contained in Accusation No. 2008-269 shall be deemed to be true,
10 correct, and admitted by Respondent when the Board determines whether to grant or deny the
11 petition.

12 17. Upon reinstatement of the license, Respondent shall pay to the Board costs
13 associated with its investigation and enforcement pursuant to Business and Professions Code
14 section 125.3 in the amount of \$4,116.00. Respondent shall be permitted to pay these costs in a
15 payment plan approved by the Board.

16 18. Should Respondent ever apply or reapply for a new license or certification,
17 or petition for reinstatement of a license, by any other health care licensing agency in the State of
18 California, all of the charges and allegations contained in Accusation No. 2008-269 shall be
19 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
20 Issues or any other proceeding seeking to deny or restrict licensure.

21 19. Respondent shall not apply for licensure or petition for reinstatement for
22 two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

23 20. Upon seeking reinstatement, it is the responsibility of the former licensee
24 to submit competent evidence of the ability to safely and competently practice as a registered
25 nurse.

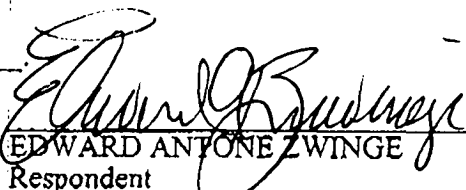
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ACCEPTANCE

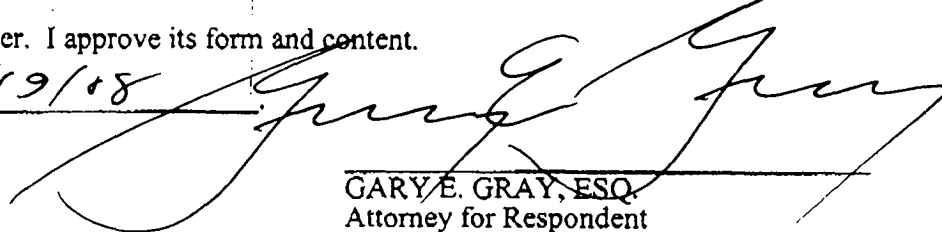
I have carefully read the Stipulated Surrender of License and Order and have fully discussed it with my attorney, Gary E. Gray, Esq.. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 6/19/08


EDWARD ANTONE ZWINGE
Respondent

I have read and fully discussed with Respondent EDWARD ANTONE ZWINGE, the terms and conditions and other matters contained in the above Stipulated Surrender of License and Order. I approve its form and content.

DATED: 6/19/08

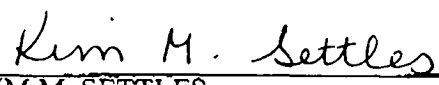

GARY E. GRAY, ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 6/19/08

EDMUND G. BROWN JR., Attorney General
of the State of California


KIM M. SETTLES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2008-269

1 EDMUND G. BROWN, JR., Attorney General
of the State of California
2 KIM M. SETTLES, State Bar No. 116945
Deputy Attorney General
3 California Department of Justice
1515 Clay Street, 20th Floor
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13 **EDWARD ANTONE ZWINGE**
17760 Countryside Court
14 Prunedale, CA 93907
Registered Nurse License No. 271962
15

ACCUSATION

Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about August 31, 1976, the Board of Registered Nursing issued
23 Registered Nurse License Number 271962 to EDWARD ANTONE ZWINGE (Respondent).
24 The Registered Nurse License was in full force and effect at all times relevant to the charges
25 brought herein and expired on February 29, 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Pursuant to Code section 2750, the Board of Registered Nursing may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 of the Nursing Practice Act.

5. Section 2761(a) of the Code provides, in pertinent part, that the Board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct, which includes, but is not limited to certain enumerated conduct.

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist, administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section."

7. Pursuant to Business and Professions Code section 2764, the expiration or suspension of a license by operation of law or by decision of the board or a court, shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or

1 to render a decision imposing discipline of the licensee. Pursuant to Business and Professions
2 Code section 2746.8, a registered nurse license may be renewed within eight years of its
3 expiration.

4 8. Pursuant to Code section 125.3, the Board of Registered Nursing may
5 request the administrative law judge to direct a licensee found to have committed a violation or
6 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
7 and enforcement of the case.

8 DRUGS

9 9. "Morphine" is a Schedule II controlled substance pursuant to Health and
10 Safety Code section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions
11 Code section 4022. Morphine, a central nervous system depressant, is a systemic narcotic and
12 analgesic used in the management of pain.

13 10. "Tylenol with codeine #3" is a Schedule III controlled substance pursuant
14 to Health and Safety Code section 11056(e)(2) and a dangerous drug pursuant to Business and
15 Professions Code section 4022. It is indicated for relief of mild to moderate pain.

16 10. "Vicodin" is a trade name for the generic compound consisting of
17 Hydrocodone Bitartrate or Dihydrocodeinone and Acetaminophen. Each tablet contains
18 Hydrocodone Bitartrate or Dihydrocodeinone (5 mg.) and Acetaminophen (500 mg.). It is a
19 Schedule III controlled substance and narcotic as defined in Health and Safety Code Section
20 11056(e)(4) and is a dangerous drug within the meaning of Business and Professions Code
21 Section 4022. It is classified as a narcotic analgesic/opiate agonist. Its primary effect is to alter
22 the perception of pain.

23 11. "Ativan" is a brand name for Lorazepam, which is a depressant and a
24 Schedule IV controlled substance as listed in Health and Safety Code Section 11055(d)(16). It is
25 a dangerous drug pursuant to Business and Professions Code Section 4022. It is indicated in the
26 treatment of anxiety with depression and/or acute alcohol withdrawal symptoms.

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12. "Phenergan" is the brand name for the generic drug Promethazine HCL and is a dangerous drug pursuant to Business and Professions Code section 4022. It is an antiemetic.

13. "Clindamycin" is the generic name for Cleocin, a semi-synthetic antibiotic, and is a dangerous drug pursuant to Business and Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

14. Respondent has subjected his license to discipline under Code section 2761(a) on the grounds of unprofessional conduct as defined by Code section 2762(e), in that while employed as a registered nurse in the Emergency Department at Santa Clara Valley Health and Hospital System, he made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other records pertaining to controlled substances and/or dangerous drugs in the following respects:

a. On December 20, 2004, at 1627 hours, respondent withdrew 5 mg Morphine for patient R.W.,¹ but charted the administration at 1625 hours. Additionally, respondent's withdrawal of the Morphine was not pursuant to a physician's order; instead, respondent wrote the order for Morphine.

b. On December 7, 2004, at 0324 hours, respondent withdrew 5 mg Morphine for patient T.T., without a physician's order, and failed to make a record of the administration of said controlled substance.

c. On December 3, 2004, at 2259 hours, respondent documented that he dispensed 25 mg Phenergan (4 tablets) to patient L.D. upon discharge, although there was no physician's order for Phenergan.

d. On December 20, 2004, at 1524 hours, respondent withdrew 10 mg Morphine for patient D.H., a patient for whom there was no physician's order and who was not respondent's assigned patient. Additionally, respondent failed to chart the administration of the Morphine.

1. Patient initials are used to protect the patient's privacy.

1 e. On November 29, 2004, at 0210 hours, respondent withdrew Tylenol
2 with Codeine #3 (4 tablets) for patient R.H., but charted the administration at
3 0204 hours. Additionally, respondent's withdrawal of the Tylenol with Codeine
4 #3 was not pursuant to a physician's order.

5 f. On December 7, 2004, at 0310 hours, respondent dispensed Vicodin (2
6 tablets) and Clindamycin (2 tablets) to patient A.H. upon discharge, although
7 there were no physician's orders for these medications.

8 g. On November 29, 2004, at 1950 hours, respondent withdrew and
9 dispensed 2 mg Ativan to patient T.L., although there was no physician's order for
10 Ativan.

11 h. On December 17, 2004, at 1611 hours, respondent withdrew 5 mg
12 Morphine for patient M.D., and charted administration of said Morphine at 1616
13 hours. At 1809 hours on the same day, the Pyxis (dispensing) machine reflects
14 that respondent returned the same vial of Morphine that was removed at 1611
15 hours. While in the Pyxis machine returning the 1611 dose, respondent withdrew
16 a second vial of Morphine for patient M.D., and failed to chart the administration
17 of the second dose of Morphine.

18 i. On November 29, 2004, at 2209 and 2316 hours, respondent withdrew 5
19 mg Morphine for patient R.A. At 2229 hours, respondent documented the
20 administration of the first dose of Morphine, but respondent has failed to
21 document the administration of the second dose of Morphine that was withdrawn.
22 That same day, at 0211 hours, respondent dispensed Vicodin (4 tablets) to R.A.
23 upon discharge, although there was no physician's order for Vicodin.

24 **SECOND CAUSE FOR DISCIPLINE**

25 15. Complainant re-alleges the allegations set forth in paragraph 14 above,
26 which are herein incorporated by reference as though fully set forth.

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16. Respondent has subjected his license to discipline under Code section 2761(a) on the grounds of unprofessional conduct, as defined by Code section 2762(a), in that on eight of the nine occasions set forth in paragraph 14 above, respondent unlawfully obtained and possessed controlled substances and/or dangerous drugs by withdrawing medications from the hospital supply (Pyxis dispensing machine) in the absence of physician's orders for their withdrawal, in violation of Business and Professions Code section 4060.

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 271962, issued to EDWARD ANTONE ZWINGE.

2. Ordering EDWARD ANTONE ZWINGE to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 3/24/08


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant